

**COUNCIL MEETING NOTICE AND AGENDA
WEDNESDAY, OCTOBER 24, 2012
9:00 A.M. OR SOON THEREAFTER**

COUNCIL CHAMBERS
HISTORIC COUNTY BUILDING
4396 RICE STREET, SUITE 201
Līhu'e, Kaua'i, Hawai'i 96766

RECEIVED

*12 OCT 18 P4:13

A. MEETING CALLED TO ORDER.

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

B. ROLL CALL.

C. APPROVAL OF AGENDA.

D. MINUTES of the following meetings of the Council:

1. Special Council Meeting of March 7, 2012
2. Council Workshop of September 24, 2012
3. Council Meeting of September 26, 2012

E. CONSENT CALENDAR:

1. C 2012-408 Communication (10/05/2012) from the Budget and Purchasing Director, transmitting for Council consideration, amendments to Ordinance No. B-2012-736, as amended, relating to the Fiscal Year 2012-2013 Operating Budget and Ordinance No. B-2012-737, as amended, relating to the Fiscal Year 2012-2013 Capital Budget to reduce the Capital Improvement Projects (CIP) funding level for three (3) FEMA eligible projects due to the recent approval of FEMA reimbursements. (*See Proposed Draft Bills (No. 2454) and (No. 2455)*)
2. C 2012-409 Communication (10/12/2012) from Council Chair Furfaro, transmitting for Council consideration a proposed Ordinance Amending Ordinance No. B-2012-736, as amended, relating to the Fiscal Year 2012-2013 Operating Budget, to provide a \$31,000.00 grant administered by the Office of the Mayor for the Teen Court Program. (*See Proposed Draft Bill (No. 2456)*)

3. C 2012-410 Communication (10/18/2012) from Council Chair Furfaro, transmitting for Council consideration, A Proposed Bill For An Ordinance Relating to General Provisions Relating to Finance, Establishing a Reserve Fund and a Reserve Fund Policy. (*See Proposed Draft Bill (No. 2457)*)

F. COMMUNICATIONS:

1. C 2012-411 Communication (09/24/2012) from Council Chair Furfaro, requesting the presence of the County Engineer to provide an update to the Council on the status of the Kapaia Swinging Bridge repairs. This briefing should include but not be limited to, permitting issues and conditions placed on the County by the State Historic Preservation Division.
2. C 2012-412 Communication (10/05/2012) from the Fire Chief, requesting Council approval to expend approximately \$5,400.00 from the Prevention Bureau's Equipment Account for a 10kw generator to be used with the new educational/safety trailer.
3. C 2012-413 Communication (10/08/2012) from the Director of Budget and Purchasing, transmitting for Council information, FY 2012-2013 1st Quarter Statement of Equipment Purchases, pursuant to Section 17 of the Operating Budget Ordinance No. B-2012-736.
4. C 2012-414 Request (10/17/2012) from the Office of the County Attorney for authorization to expend up to \$75,000 for special counsel's continued services provided in County of Kaua'i vs. Michael Guard Sheehan, et al., Civil No. 11-1-0098 (Condemnation), Fifth Circuit Court, and related matters.
5. C 2012-415 Request (10/17/2012) from the Office of the County Attorney for authorization to expend funds up to \$15,000.00 for special counsel's continued services provided in Kaua'i Police Commission, et al. vs. Bernard P. Carvalho, Jr., in his official capacity as the Mayor of the County of Kaua'i, Civil No. 12-1-0229 (Fifth Circuit Court), and related matters.

G. LEGAL DOCUMENTS:

1. C 2012-385 Communication (08/28/2012) from the Civil Defense Manager, recommending Council approval for the second amendment, five (5) year lease agreement between the County of Kaua'i and Bank of Hawai'i, Trustee of the Kukuilono Park Trust Estate, which extends the lease of the County's 800 MHz radio site located at Kukuilono Park in Kalāheo, Kaua'i, Hawai'i, for emergency radio communications for the County of Kaua'i, which license fee will be paid in incremental increases of three percent (3%) each year for the five (5) year period commencing July 1, 2012.
 - Second Amendment of License Agreement
(Deferred 10/10/2012)

2. C 2012-416 Communication (10/18/2012) from Ian Jung, Deputy County Attorney, recommending Council approval to acquire Lot 1-C (Ibbs Subdivision), Waipouli, Kawaihau, Kaua'i, Hawai'i through an Exchange Deed with Ryan Richard Rutt, Jennifer Anne Rutt, Kenneth G. Barker, as trustee of the Kenneth G. Barker Trust dated March 20, 2008, Melissa A. Barker, as trustee of the Melissa A. Barker Trust dated March 20, 2008, Harvey L. Cohen, as trustee of The Cohen Family Trust under unrecorded Trust Agreement dated July 24, 2008, Frank Mashevich, LTJ Colby Properties Hawai'i LLC, Patrick L. Ibbs, and Stephanie A. Ibbs, as previously approved by the Council through Resolution No. 2008-3
 - Exchange Deed (TMK: (4) 4-4-004-028 (por.), TMK: (4) 4-4-004:003 (por.), TMK: (4) 4-4-004:053 (por.)

H. CLAIMS:

1. C 2012-417 Communication (10/01/2012) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by State Farm Insurance, as subrogee of Diane C. Cooke, for damage to her vehicle, pursuant to Section 23.06 Charter of the County of Kaua'i.

2. C 2012-418 Communication (10/09/2012) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by Christopher J. Gandeza, for damage to his vehicle, pursuant to Section 23.06 Charter of the County of Kaua'i.
3. C 2012-419 Communication (10/10/2012) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by Kaua'i Island Utility Cooperative, for damage to their property, pursuant to Section 23.06 Charter of the County of Kaua'i.
4. C 2012-420 Communication (10/11/2012) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by Wally Iwasaki, for personal injury, pursuant to Section 23.06 Charter of the County of Kaua'i.

I. COMMITTEE REPORTS:

1. HOUSING / TRANSPORTATION / ENERGY CONSERVATION & EFFICIENCY COMMITTEE REPORT:

- a. **CR-HTE 2012-12** on Bill No. 2446 A BILL FOR AN ORDINANCE AMENDING CHAPTER 17A, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO BUS FARES **(Approved as amended.)**

2. PUBLIC SAFETY & ENVIRONMENTAL SERVICES COMMITTEE REPORTS:

- a. **CR-PSE 2012-09** on PSE 2012-06 Communication (10/10/2012) from the Council Chair, requesting the presence of the Prosecuting Attorney, to provide an overview and update on the Teen Court Program. **(Received for the record.)**

- b. CR-PSE 2012-10 on C 2012-401** Communication (09/11/2012) from the Civil Defense Agency, requesting Council approval to receive and expend grant funds from the U.S. Department of Homeland Security, via the State of Hawai'i Department of Defense in the amount of \$359,925.00, to be used for the FY 2012 State Homeland Security Program which will enhance the capability of State and local units of government to prevent, deter, respond to and recover from, threats and incidents of terrorism, and to continue to provide support to the Citizen Corps Councils.
(Approved.)

J. BILLS FOR FIRST READING:

1. Proposed Draft Bill (No. 2454) – AN ORDINANCE AMENDING ORDINANCE NO. B-2012-737, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2012 THROUGH JUNE 30, 2013, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND – CIP (FEMA Reimbursement)

2. Proposed Draft Bill (No. 2455) – AN ORDINANCE AMENDING ORDINANCE NO. B-2012-736, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2012 THROUGH JUNE 30, 2013, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND (FEMA Reimbursement)

3. Proposed Draft Bill (No. 2456) – AN ORDINANCE AMENDING ORDINANCE NO. B-2012-736, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2012 THROUGH JUNE 30, 2013, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND (\$31,000.00 Teen Court Grant)

4. Proposed Draft Bill (No. 2457) - A BILL FOR AN ORDINANCE AMENDING CHAPTER 6, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO GENERAL PROVISIONS RELATING TO FINANCE, ESTABLISHING A RESERVE FUND AND A RESERVE FUND POLICY

K. BILLS FOR SECOND READING:

1. Bill No. 2446, Draft 1 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 17A, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO BUS FARES (*See also CR-HTE 2012-12; the Housing / Transportation / Energy Conservation & Efficiency Committee recommended approval as amended to Draft 1 on October 17, 2012.*)

L. EXECUTIVE SESSION: Pursuant to Haw. Rev. Stat. ("H.R.S.") §92-7(a), the Council may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held pursuant to H.R.S. §92-4 and shall be limited to those items described in H.R.S. §92-5(a). (*Confidential reports on file in the County Attorney's Office and/or the County Clerk's Office. Discussions held in Executive Session are closed to the public.*)

1. ES-571 Pursuant to Hawai'i Revised Statutes Sections 92-4, 92-5(a)(4), and Kaua'i County Charter section 3.07(e), the Office of the County Attorney, on behalf of the Council, requests an executive session to allow the Council to consult with the County Attorney regarding how the Kaua'i Police Department conducts its operations involving surveillance helicopters, and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item. (*Deferred 10/10/2012*)

2. ES-579 Pursuant to Hawai'i Revised Statutes Sections 92-4, 92-5(a)(4) and (6), and Kaua'i County Charter section 3.07(e), the Office of the County Attorney, on behalf of the Council, requests an executive session to allow the Council to consult with the County Attorney regarding C 2012-385, Communication (08/28/2012) from the Civil Defense Manager, recommending Council approval for the second amendment, five (5) year lease agreement between the County of Kaua'i and Bank of Hawai'i, Trustee of the Kukuilono Park Trust Estate, which extends the lease of the County's 800 MHz radio site located at Kukuilono Park in Kalāheo, Kaua'i, Hawai'i for emergency radio communications for the County of Kaua'i, for the five (5) year period commencing July 1, 2012, and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.
3. ES-580 Pursuant to Hawai'i Revised Statutes Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(e), the Office of the County Attorney, on behalf of the Council, requests an executive session for Council to consult with the County Attorney regarding the Council's public release of the County Attorney's written legal opinion dated October 8, 2012, regarding the authority of the Office of the Prosecuting Attorney to offer a diversion program, and related matters. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.
4. ES-581 Pursuant to Hawai'i Revised Statutes Sections 92-4 and 92-5(a)(4) and (8), and Kaua'i County Charter Section 3.07(e), the purpose of this executive session is to provide the Council with a briefing on County of Kaua'i vs. Michael Guard Sheehan, et al., Civil No. 11-1-0098 (Condemnation), Fifth Circuit Court, and related matters. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

5. ES-582 Pursuant to Hawai'i Revised Statutes Sections 92-4, 92-5(a)(4), and Section 3.07(e) of the Kaua'i County Charter, the Office of the County Attorney requests an executive session with the Council to provide the Council with a briefing on Kaua'i Police Commission, et al. vs. Bernard P. Carvalho, Jr., in his official capacity as the Mayor of the County of Kaua'i, Civil No. 12-1-0229 (Fifth Circuit Court), and related matters. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

M. ADJOURNMENT.

N. PUBLIC HEARING NOTE: If the Council is not finished with this meeting by approximately 1:30 p.m., it will recess for the public hearing on the following. After the public hearing, the Council will reconvene to complete any unfinished business.

1. *Bill No. 2450 – A BILL FOR AN ORDINANCE REGARDING AMENDING CHAPTER 8, KAUAI COUNTY CODE 1987, RELATING TO THE ZONING DESIGNATION IN LĪHU'E, KAUAI (Department of Water, County of Kaua'i, Applicant)*

For complete information, including a summary of the item, please refer to the official Notice of Public Hearing. The official Notice of Public Hearing has been published, posted on the bulletin board, and filed in the County Clerk's Office as required by law. Notwithstanding this Council Agenda, the Council may hold a public hearing on any item which has been posted in advance in compliance with the Sunshine Law.

For a copy of the notice, please go to:

<http://www.kauai.gov/Government/CountyCouncil/CouncilAgendasandPublicHearingNotices/tabid/73/Default.aspx>

O. NOTE: SPECIAL ACCOMMODATIONS AND SIGN LANGUAGE INTERPRETER AND INTERPRETERS FOR NON-ENGLISH SPEAKING PERSONS ARE AVAILABLE UPON REQUEST FIVE (5) DAYS PRIOR TO THE MEETING DATE TO THE COUNTY CLERK, 4396 RICE STREET, SUITE 209, LĪHU'E, KAUAI, TELEPHONE NO. (808) 241-4188. FACSMILE NO. 241-6349.